IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 234 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

P C MODI

Versus

STATE OF GUJARAT

Appearance:

M/S TRIVEDI & GUPTA for Petitioner

MR ST MEHTA APP for Respondent No. 1

MR SUNIL C PATEL for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 28/09/2000

ORAL JUDGEMENT

This Revision Application under section 482 CRPC has been preferred by the accused no. 5 in Criminal Case No. 916/88 against the order dated 10th May, 1996, made by the learned Additional Chief Metropolitan Magistrate,

Ahmedabad, below application Ex.56.

On 9th September, 1988, the Superintendent of Central Excise filed a complaint in respect of evasion of Excise duty by the accused one M/s. Jagdish Processors Pvt. Ltd. and four others in the court of the learned Additional Chief Metropolitan Magistrate, Ahmedabad, which was registered as Criminal Case No. 916/88. It was the case of the complainant that the accused had hatched a conspiracy to evade the Excise duty by employing dubious method and thereby they have committed offences under section 120-A IPC. The accused no. 1 was a Pvt. Ltd. Company , and accused nos. 2, 3, and 4 were the Directors in the Company. The accused no. 5 was the Chief Executive in the Company. It was alleged that the accused no. 1 Company was doing the work of processing gray fabrics which were, after being processed, liable to Excise duty. On 17th November, 1987, a raid was carried out in the premises of the accused no. 1 Co., where several illegalities were found and it was noticed that violation of the Rules pertaining to maintenance of accounts had occurred with a view to evading the payment of Excise duty. It was alleged that the accused had evaded the payment of Excise duty to the extent of Rs. 19,25,937-71 PS. The accused had thus, committed offences under sections 9, 9-AA of the Central Excises & Salt Act, 1944 (hereinafter referred to as `the Act of 1944') read with sections 120-B and 120-A IPC. It was also alleged that the goods confiscated and allowed to remain in custody of the accused had been disposed of by the accused without the permission of the concerned authority and without maintaining any record and without paying the Excise duty on such goods. Pursuant to the said complaint, process was ordered to be issued upon the accused. Feeling aggrieved, the accused preferred Misc. Criminal Application No. 3536/94 before this court, and prayed for quashing of the proceedings. This court (Coram : Mr. Justice K.R. Vyas) by its order dated 7th September, 1994, recorded the statement to the effect that the petitioner shall make appropriate application for dropping the proceedings and also for exemption before the learned Additional Chief Metropolitan Magistrate, Ahmedabad, within one week therefrom. On the said statement, the petition was permitted to be withdrawn subject to the direction that as and when such an application is made, the learned Magistrate would hear the same and may dispose of the same within four weeks from the date of the receipt of the application, and that the learned Magistrate would not insist for the presence of the accused till the disposal of the criminal case. Pursuant to the said order, the accused made application

Ex. 56 for dropping of the proceedings and/or discharge under section 245 CrPC. The said application was rejected by the learned Magistrate by its order dated 10th May, 1996. Feeling aggrieved, the accused no. 5 has preferred the present Revision Application.

Mr. Trivedi has relied upon the Schedule to the Central Excises Tariff Act, 1985 as was applicable at the relevant time. He has particularly relied upon Item No.55.07. He has submitted that the said Item refers to the Excise duty leviable on Man-made fabric, and the rate of duty leviable is Nil. He has, therefore, submitted that no Excise duty was leviable on the processed fabric sold by the accused under the Act of 1944. However, it is the Additional Duties of Central Excise (Goods of Special Importance) Act, 1957 (hereinafter referred to as `the Act of 1957'), under which the Excise duty is levied on the processed Man-made fabric. By sub-section (3) of section 3 thereof, the provisions of the Central Excises and Salt Act, 1944, and the Rules made thereunder, including those relating to refunds and exemption from duty, have been made applicable, so far as may be, in relation of the levy and collection of the additional duties as they apply in relation to the levy and collection of the duties of excise on the goods specified in sub-section (1) of Section 3. He has submitted that at the relevant time, there was no specific provision in respect to penalty or prosecution for evasion of the taxes under the said Act unlike the provisions under the Act of 1944. Hence, even if the accused were proved to have evaded payment of additional duty leviable under the Act of 1957, the same would not be liable to any penal consequence i.e. neither a penalty can be imposed for such evasion, nor can the accused be prosecuted in a criminal court. He has relied upon the judgment of the Delhi High Court in the matter of PIONEER SILK MILLS PVT. LTD. VS UNION OF INDIA (1995 {80} ELT 507 {DEL.}). He has submitted that the very issue was subject matter of consideration before the Delhi High Court and the Court there has taken a view that no penal consequences should follow unless there is a specific provision providing for penal consequences. Moreover, the aforesaid judgment of the Delhi High Court is being followed by the Tribunal which is the Apex body under the Excise Act, the said decision has thus become the law of the land. Hence, the accused are not liable to be prosecuted in the court of law for alleged evasion of the Excise duty under the Act of 1957.

In the matter of Pioneer Silk Mills (supra), the petitioner challenged the show cause notices issued by

the Collector of Central Excise requiring the petitioner to show cause as to why its respective plant, machinery, land and building utilised in the manufacture etc. of the fabric mentioned in the show cause notices should not be confiscated to the Government under Rule 173-Q (2) of the Central Excises Rules, 1944, and further that why the penalty should not be imposed on them under Rule 9 (2) and Rule 173Q of the Rules. The petitioner also challenged the notices calling upon it to show cause as to why the penalty should not be imposed under Rule 209A of the Rules. The contravention of the rules was alleged with respect the levy and collection of additional duties of Excise under the Act of 1957 as applicable by virtue of section 3 of the Act of 1957. The High Court considering several precedents of the Hon'ble Supreme Court held that - " The argument that various sections falling in Chapter-II of the Central Excises Act which has the heading "Levy and Collection" would all be construed as provisions for levy and collection of additional duty as well, as of no avail to the revenue and we reject this argument. In fact, as noted above, Chapter-II contains no provision for levy of penalty ". It further held that - " When penalty is additional tax constitutional mandate requires a clear authority of law for imposition thereof." Further, the court summarised its view as under :

> We find there is no mandate in the Additional Duties Act for levy of penalty and the Central Excises Act and the Rules framed thereunder can not be imported in the Additional Duties Act for the purpose of levy of penalty .... but then Article 265 of the Constitution mandates that no tax shall be levied and collected except by authority of law. There being no such authority of law to levy penalty, we have to hold so. "

Pursuant to the above judgment, an amendment appears to have been brought about in the Act of 1957 by the Finance Bill, 1994, by substituting sub-section (3) of section 3 of the Act of 1957. Under the substituted sub-section (3), the provisions of the Act of 1944 and the Rules made thereunder relating to, interalia, offences and penalties have been specifically made applicable to the levy and collection of duties of Excise on the goods specified in sub-section (1) thereof.

The argument is besides the point. In the matter of Pioneer Silk Mills (supra), the notices in question

were indisputably issued in respect of `levy and collection of additional duties of Excise under the Act of 1957'. In the present case, however, that does not appear to be the case. The complaint lodged against the accused refers to the levy of Excise duty and does not refer to the levy of additional duty of Excise under the Act of 1957. Besides, the petitioner has not produced the demand notices or the show cause notices which could evidence whether the demand was for Excise duty or for additional Excise duty under the Act of 1957. In absence of such material, it is too early to say that no Excise duty was leviable on the goods in question and what was leviable was additional duty under the Act of 1957. If it were definitely evident that what the accused are alleged to have evaded is the additional duty of Excise under the Act of 1957, probably, the petitioner could have successfully argued that he was not liable to penal consequences including the criminal prosecution. However, in absence of any material, and more particularly, when the complaint refers to the evasion of the Excise duty and not that of the additional duty of Excise under the Act of 1957, the accused can not validly claim an order of discharge under section 245 CrPC. There is one more reason why the accused can not be discharged at this stage. The accused are alleged to have committed offences punishable not only under the Act of 1944, but also under the IPC. Hence, no order of discharge can be made in favour of the accused at this stage.

In view of the above discussion, Revision Application is dismissed. Rule is discharged. Interim relief is vacated. The learned Magistrate shall now proceed further with the matter in accordance with law.

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